

P 051520Z DEC 90
FM AMEMBASSY MOGADISHU
TO SECSTATE WASHDC PRIORITY 0963
INFO RUEHDS/AMEMBASSY ADDIS ABABA
AMEMBASSY CAIRO
AMEMBASSY DJIBOUTI
AMEMBASSY LONDON
AMEMBASSY NAIROBI
AMEMBASSY PARIS
AMEMBASSY ROME
USIA WASHDC 7883
USCENTCOM REAR MACDILL AFB FLA

C O N F I D E N T I A L SECTION 01 OF 02 MOGADISHU 10556

E.O. 12356: DECL: OADR
TAGS: PGOV PINS PHUM SO
SUBJECT: SECURITY DECREE CALLS PARTS OF CONSTITUTION INTO QUESTION
REF: MOGADISHU

¶1. (U) ON DECEMBER 5, RADIO MOGADISHU MADE THE FOLLOWING BROADCAST:

¶2. (U) TEXT FROM UNOFFICIAL USIS TRANSLATION.
BEGIN TEXT:

THE MINISTER OF JUSTICE, HUSSEIN SHIEKH ABDIRAHMAN MATTAN, GAVE DETAILS ON A NEW ANTI-BANDITRY LAW SIGNED BY THE PRESIDENT WHICH WILL BE PUBLISHED IN THE OFFICIAL BULLETIN. THE MINISTER TOLD REPORTERS FROM THE LOCAL MEDIA THAT:

- ANYONE WHO ACTS IN A WAY THAT WEAKENS THE GOVERNMENT POLICY ON MAINTAINING SECURITY, UNITY, AND FUNCTIONALITY OF THE GOVERNMENT; AND COMMITS ARMED BANDITRY AND ROBBERY OF PUBLIC AND PRIVATE PROPERTY SHALL HAVE COMMITTED A CRIME.
- ABOVE CRIME IS PUNISHABLE BY DEATH AND CONFISCATION OF ALL PROPERTY.
- ANYONE WHO ORGANIZES, ENCOURAGES, FACILITATES OR TAKES PART IN COMMITTING THE ABOVE CRIMES WILL BE SENTENCED FROM 10 YEARS TO LIFE IMPRISONMENT, ON CONDITION THAT THE CULPRIT SURRENDER LOOTED PROPERTY AND DID NOT COMMIT HOMICIDE. ANYONE WHO ASSISTS THE CULPRIT IN ESCAPING OR HIDING WILL BE SENTENCED 3 TO 5 YEARS. ANYONE WHO PURCHASES LOOTED PROPERTY OR BROKERS OF SUCH PROPERTY WILL BE SENTENCED TO 3 TO 6 YEARS AND FINED 1 TO 5 MILLION SHILLINGS.
- ANYONE WHO HIDES KNOWN INFORMATION ON BANDITRY WILL BE SENTENCED TO 1 TO 3 YEARS.
- IF SOMEONE GIVES ADVANCE INFORMATION ON ACTS OF BANDITRY AND SECURITY FORCES FOIL THE PLOT, THE INFORMANT WILL BE PARDONED.
- ANYONE WHO PROVIDES INFORMATION ON BANDITS WILL BE FINANCIALLY REWARDED FROM 200,000 TO 2,000,000 SHILLINGS.
- ANYONE WHO USES HIS/HER VEHICLE FOR TRANSPORTING LOOTED PROPERTY WILL BE SENTENCED TO 3 TO 5 YEARS.
- THE GOVERNOR OF THE REGION CAN KEEP THE CULPRIT IN DETENTION BETWEEN THREE MONTHS AND ONE YEAR, IF HE/SHE IS SEEN AS THREAT TO NATIONAL SECURITY. THE DECISION WILL BE RATIFIED BY THE REGIONAL COURT WITHIN SEVEN DAYS.
- ANYONE INJURED OR KILLED DURING THE COURSE OF FIGHTING AGAINST ARMED BANDITS WILL BE COMPENSATED BY THE GOVERNMENT WITH A SUM OF 1 TO 10 MILLION SHILLINGS, WHILE THE SEVERANCE PAY OF THE DECEASED

WILL BE GIVEN TO HIS IMMEDIATE FAMILY INCLUDING THE 10 MILLION SHILLING BONUS.

- THE ATTORNEY GENERAL IS EMPOWERED TO APPOINT THE TRIAL JUDGES.

- THE BANDIT CAN BE ARRESTED WITHOUT WARRANT WITH NO RIGHT TO APPEAL.

- A DEVELOPMENT FUND TO GIVE THESE BONUSES WILL BE ESTABLISHED WITHIN THE POLICE FORCE.

- THIS LAW WILL BE VALID FOR ONE YEAR.

- ANY EXISTING LAWS THAT CONTRADICT THIS ONE IS NULL AND VOID.
END TEXT.

¶3. (C) COMMENT. IT IS NOT CLEAR WHETHER THE DECREE APPLIES ONLY TO MOGADISHU.

NOTE: RECEIVED WITHOUT REF. NUMBER. CORRECTION TO FOLLOW.

¶4. (C) THE DECREE IS BROAD AND VAGUE. THE LANGUAGE APPLYING TO "ANYONE WHO ACTS IN A WAY THAT WEAKENS THE GOVERNMENT POLICY ON MAINTAINING SECURITY, UNITY, AND FUNCTIONALITY OF THE GOVERNMENT" AND ALLOWING THE DETENTION FOR UP TO ONE YEAR OF ANYONE "SEEN AS A THREAT TO NATIONAL SECURITY" COULD BE APPLIED TO ALMOST ANYONE OPPOSING THE GOVERNMENT; THAT IS TO SAY, TO ALMOST ANYBODY.

¶5. (C) SEVERAL SPECIFIC ARTICLES OF THE NEW CONSTITUTION ARE POTENTIALLY AFFECTED BY THIS DECREE. ARTICLE 84, PARAGRAPH 1 ALLOWS THE PRESIDENT TO "ADOPT PREVENTATIVE MEASURES" IN SITUATIONS THAT "MAY PLACE THE SOVEREIGNTY, THE TERRITORIAL INTEGRITY, THE INTERNAL OR EXTERNAL SECURITY, OR THE FUNCTIONING OF THE COUNTRY INTO GRAVE DANGER." PARAGRAPH 2 OF THE SAME ARTICLE, HOWEVER, SAYS SUCH MEASURES MUST BE PRESENTED TO THE PEOPLE'S ASSEMBLY WITHIN 30 DAYS FOR APPROVAL, AND THE LAW CANNOT BE VALID FOR MORE THAN SIX MONTHS, ACCORDING TO PARAGRAPH 3.

¶6. (C) ARTICLE 25, PARAGRAPH 2 PROHIBITS ARRESTS EXCEPT OF THOSE CAUGHT IN THE ACT OF COMMITTING AN OFFENSE, OR BY ORDER OF A COURT. ALTHOUGH THERE IS AN EXCEPTION FOR CASES OF "URGENT NECESSITY," SUCH ARRESTS MUST BE BROUGHT TO THE ATTENTION OF THE JUDICIARY WITHIN 48 HOURS SO THAT THE VALIDITY OF THE ARREST CAN BE EXAMINED.

¶7. (C) ARTICLE 27 ALLOWS EXPR/PRIATION OF PRIVATE PROPERTY ONLY FOR "REASONS OF PUBLIC INTEREST," AND IN EXCHANGE FOR JUST COMPENSATION.

¶8. (C) WHATEVER THE SPECIFIC VIOLENCE DONE TO THE PROVISIONS OF THE CONSTITUTION, THIS SORT OF DECREE, ALLOWING THE ARREST, WITHOUT WARRANT OR APPEAL, FOR A BROAD VARIETY OF OFFENSES, CLEARLY RUNS COUNTER TO THE SPIRIT OF THE DOCUMENT.

¶9. (C) THE NEW DECREE, ON TOP OF THE RECENT ARRESTS OF OPPOSITION FIGURES (SEPTEL), WILL UNDOUBTEDLY BE VIEWED BY THE OPPOSITION AS AN ACT OF BAD FAITH ON THE PART OF THE SIAD GOVERNMENT. END COMMENT.

BISHOP